

a written statement or deposition. In order to be admissible, any written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

#### § 26.47 Evidence.

The ALJ shall admit any relevant oral or documentary evidence that is not privileged. Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance to the ALJ's evidentiary ruling, but shall not be binding. Parties may object to clearly irrelevant material, but technical and hearsay objections to testimony as used in a court of law will not be sustained. The ALJ may, however, exclude evidence if its probative value is substantially outweighed by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

#### § 26.48 Posthearing briefs.

Posthearing briefs shall be filed only upon order by the ALJ.

#### § 26.49 The record.

The hearing will be recorded and transcribed by a reporter designated by the Department under the supervision of the ALJ. The parties and the public, at their own expense, may obtain copies of transcripts from the reporter. A copy of the transcript shall be made available at cost to the parties upon request. The transcript of testimony, exhibits, and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary or designee.

#### § 26.50 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the relief granted. The ALJ's initial decision shall not become effective unless it becomes or is incorporated into final agency action in accordance with § 26.50(c) or § 26.52(1).

(b) The ALJ shall serve the initial decision on all parties within 60 days

after either the close of the record or the expiration of time permitted for submission of posthearing briefs, whichever is later. The ALJ may extend the 60-day period for serving the initial decision in writing for good cause. The initial decision shall inform the parties that, if provided for and consistent with Departmental regulations, any party may request, in writing, Secretarial review of the determination within 30 days after the ALJ issues the initial decision, in accordance with § 26.52 of this part. The determination shall include the mailing address, facsimile number, and electronic submission information to which the request for Secretarial review should be sent. A request for Secretarial review may be made by mail, delivery, facsimile, or electronic submission.

(c) If no appeal is timely filed with the Secretary or designee, the initial decision shall become the final agency action.

#### § 26.51 Interlocutory rulings.

(a) *Interlocutory rulings by the ALJ.* A party seeking review of an interlocutory ruling shall file a motion with the ALJ within 10 days of the ruling requesting certification of the ruling for review by the Secretary. Certification may be granted if the ALJ believes that:

(1) It involves an important issue of law or policy as to which there is substantial ground for difference of opinion; and

(2) An immediate appeal from the order may materially advance the ultimate termination of the litigation.

(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within 10 days of the ALJ's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, shall review a certified ruling. The Secretary, or designee, has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the ALJ or the Secretary, or designee, the hearing shall proceed pending the determination of any interlocutory appeal, and